

REMARKS

Applicant notes that claims 24-28 are withdrawn. Upon allowance of independent claim 21, applicant requests rejoinder of claims 24-28.

Independent claim 17 has been amended to change the word "coupled" to the word "placing" in the last element of the claim.

The Examiner rejected claims 11-23, 29 and 30 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 4,824,287 to Tracy (hereinafter "Tracy") or U.S. Patent No. 2,817,956 to Young (hereinafter "Young") in view of U.S. Patent No. 848,279 to Ashley (hereinafter "Ashley").

For the U.S. Patent and Trademark Office to "establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations." Manual of Patent Examining Procedure (M.P.E.P.) Section 2143.

It is well known that when combining the content of various references "there must be some teaching, suggestion or motivation in the prior art to make the specific combination that was made by the applicant." In re Dance, 48 USPQ2d 1635, 1637 (Fed. Cir. 1998); In re Raynes, 28 USPQ2d 1630, 1631 (Fed. Cir. 1993); In re Oetiker, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992). "The mere fact that the prior art could be so modified would not have made the modification obvious unless the prior art suggested the desirability of the modification." In re Gordon, 221 USPQ 1125, 1127 (Fed. Cir. 1984).

Moreover, the Patent and Trademark Office can satisfy its burden of establishing obviousness "only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead an individual to combine the relevant teachings of the references." In re Fine, 1837 F.2d 1071, 1073, 5 USPQ2d 1596 (Fed. Cir. 1988) (emphasis added) (citations omitted). The Federal Circuit in In re Fine stated that a "bald assertion" of substituting an element in a prior art reference would have been within the ordinary skill in the art is insufficient to support a finding of obviousness." Id. at 1074.

The Federal Circuit has emphasized the requirement that the prior art must suggest the modifications necessary to achieve the claimed invention. The "mere possibility" that a prior art

reference could be modified such that its use would lead to the particular result recited in a claim does not make that recited in the claim obvious “unless the prior art suggested the desirability of such a modification.” *In re Ochia*, 71 F.3d 1565, 1570, 37 USPQ2d 1127 (Fed. Cir. 1995). “Obviousness cannot be established by hindsight combination to produce the claimed invention.” *In re Dance*, 48 USPQ2d at 1637; *In re Gorman*, 18 USPQ2d 1885, 1888 (Fed. Cir. 1991). “Combining prior art references without evidence of such a suggestion, teaching, or motivation simply takes the inventor’s disclosure as a blueprint for piecing together the prior art to defeat patentability--the essence of hindsight.” *In re Dembiczak*, 50 USPQ2d at 1617; *Feil*, 227 USPQ at 547 (Fed. Cir. 1985). The prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983); *M.P.E.P.* § 2141.02.

As discussed above, the Examiner rejected claims 11-23, 29 and 30 under 35 U.S.C. §103(a) as being unpatentable over Tracy or Young in view of Ashley. Applicant respectfully traverses the Examiner's rejections.

Independent claim 11 claims a subsurface wastewater infiltration system comprising a dripline installed in a trench below a surface of the soil, the dripline being coupled to a wastewater supply and including a plurality of openings to permit wastewater to pass therethrough; a structure located in the trench and configured to define an open area enclosing the dripline; first and second barriers located at opposite ends of the structure to allow the dripline to pass therethrough, but to prevent soil intrusion into the structure; at least one access opening in communication with the structure, the at least one access openings including a pipe extending to the surface of the soil; and a removable cover coupled to the access opening.

Independent claim 17 claims a method of subsurface wastewater infiltration comprising forming a trench in the soil; installing a dripline in the trench below a surface of the soil, the dripline including a plurality of openings to permit wastewater to pass therethrough; coupling the dripline to a wastewater supply; providing one of an open area and a porous medium in the trench surrounding the dripline; providing at least one access opening in communication with the open area or medium, the at least one access opening including a pipe extending to the surface of the soil; refilling the trench with soil; and placing a cover over the pipe to cover the access opening.

Independent claim 21 claims a subsurface wastewater infiltration system comprising a dripline installed in a trench below a surface of the soil, the dripline being coupled to a wastewater supply and including a plurality of openings to permit wastewater to pass therethrough; means surrounding the dripline for facilitating flow of wastewater from the dripline to an infiltrative soil surface; first and second barriers located at opposite ends of the flow facilitating means to allow the dripline to pass therethrough but to prevent soil intrusion into the flow facilitating means; at least one access opening in communication with the flow facilitating means, the at least one access opening including a pipe extending to the surface of the soil; and a removable cover coupled to the access opening.

The Examiner admits that neither Tracy nor Young discloses or suggests "at least one access opening" or "a removable cover coupled to the access opening" limitations. After this admission, the Examiner simply points to Ashley for the "access opening" and "cover" limitations and then makes the bald assertion that it would have been obvious to make the combination of references to produce the claimed invention. The Examiner again does not point to any teaching in the cited references of any motivation to combine the references to produce the claimed invention, because there is no such disclosure or suggestion in the cited references.

Tracy relates to a septic system. Tracy discloses arrays of tires 50 which act as a drain field for a septic tank 16. A delivery conduit 49 is provided with a plurality of perforations through which the effluent flows into hollow chambers 54 formed by the tires 50. In constructing the drain field 18, the tires 50 are located in a trench partially filled with gravel. "Thereinafter, more gravel 64 is added to the trench and, finally, the entire structure is covered by a layer of tar paper, salt hay, or woven plastic cloth 68 and top soil 70". See Tracy, col. 5, lines 54-57. In other words, the entire drain field 18 is covered in Tracy. There is no disclosure or suggestion of a need to provide aeration to the drain field 18, let alone providing at least one access pipe and cover as recited in the claims of the present application.

Young discloses a soil moisture-controlled irrigation system. Young discloses a plurality of hollow containers 15, 16, 17 located beneath the ground for irrigating the soil. As shown in Fig. 2, a container 15' includes ends 30 having ports 31 and 32 which receive a pipe 33 having perforations 34. Water from a tank enters the container 15' through pipe 33. There is no disclosure or suggestion in Young of any desirability of aerating the containers 15, 16, 17.

Ashley relates to an apparatus for sewage disposal. Ashley discloses a tank 10 having an outlet pipe 17 which connects the tank 10 to farm tiles 21 surrounded by filtering material 22.

Ashley discloses upwardly extending aerating pipes 25 provided with screens adjacent the ground. There is no disclosure or suggestion in Ashley of providing a dripline within the farm tiles 21.

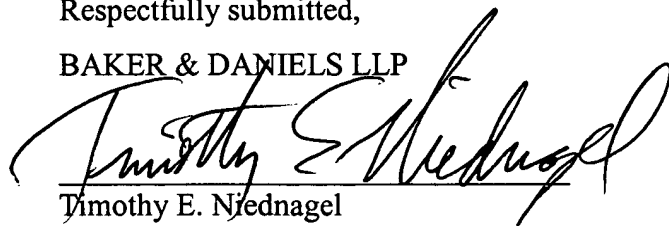
In summary, neither Tracy nor Young disclose or suggest any motivation to combine Ashley with the systems of Tracy or Young to produce the present claimed invention. Likewise, Ashley does not disclose or suggest any teaching or motivation to combine the disclosures of Tracy or Young with Ashley to produce the invention recited in independent claims 1, 17, and 21. Only through improper hindsight would the Examiner be motivated to make such combination.

For at least these reasons, Applicant submits that independent claims 11, 17 and 21 patentably define the invention over the combination of Tracy or Young combined with Ashley. Accordingly, Applicant submits that claims 11-23, 29 and 30 are in condition for allowance. Such action is respectfully requested. Applicant also requests rejoinder of claims 24-28 which depend from independent claim 21.

In the event that the examiner has questions related to this Amendment, or to the application in the general, the undersigned would appreciate the opportunity to address those questions in a telephone interview to expedite the prosecution of this application for all concerned.

Respectfully submitted,

BAKER & DANIELS LLP

A handwritten signature in black ink, appearing to read "Timothy E. Niednagel", written over a horizontal line.

Timothy E. Niednagel

Reg. No. 33,266